IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

MACA.No. 908 of 2004

OPMV.568/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA
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APPELLANT/3RD RESPONDENT

NATIONAL INSURANCE COMPANY LIMITED,
TRIPUNITHURA NOW REPRESENTED BY ITS
ASSISTANT MANAGER, REGIONAL OFFICE,
AJAY VIHAR, KOCHI-16.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONERS

1. VELAYUDHAN, S/O.UNICHEYI,
THEKKETHALAPARAMBIL, CHERIYA MANGAD BEACH,
KOYILANDI P.O.

2. SURESH, S/O.VELAYUDHAN, DO. DO.

3. SUDHA, D/O.VELAYUDHAN, DO. DO.

4. VIJISH, S/O.VELAYUDHAN, DO. DO.

BY ADV. SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13/2/2007, THE COURT ON 23/02/2007, PASSED THE FOLLOWING:

P.R. Raman & S. Siri Jagan, JJ.

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M.A.C.A. No. 908 of 2004

&

Cross objection

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Dated this, the 23rd February, 2007.

J U D G M E N T

Siri Jagan, J.

An Insurance Company, which has obtained permission from the Motor Accidents Claims Tribunal, Vadakara in O.P(MV) No. 568/1998 under Section 170 of the Motor Vehicles Act, 1988 to contest the claim on all grounds available to the owner and driver, the owner and driver having failed to contest the matter, has come up in appeal with this M.A.C.A., challenging the quantum of compensation awarded to the claimants who are the legal heirs of one Vijayi who died in a motor accident which gave rise to the motor accident claim in the said O.P.

2. The claimants are the father aged 55 years, brothers aged 23 and 18 years and sister aged 20 years of the deceased Vijayi. The main contention of the Insurance Company is regarding the multiplier adopted by the Tribunal in calculating the loss of dependency suffered by the claimants on the death of the said Vijayi, who was the daughter of the 1st respondent. According to the Insurance Company, adoption of the multiplier of 17 by the Tribunal for calculating the loss of dependency is not in tune with the principles laid down by the Supreme Court of India for calculating the loss of dependency in a claim by parents for the compensation for the death of their children. According to them, in such cases, the multiplier has to be fixed based on the age of the parents and not that of the deceased. According to the appellant, this wholesome principle is based on the fact that the dependents themselves would be having lesser lease of life and when it is their dependency that has to be calculated, the multiplier has to

be adopted on the basis of their age only. The contention is that therefore the multiplier is to be fixed taking into account the age of the father and also the fact that the deceased being a daughter, she would have got married after some time in which event her further support to the father would still be less since the father had two grown up sons and another daughter also.

3. The respondents-claimants have filed a cross-objection claiming enhanced compensation. In answer to the contention of the Insurance Company, they would submit that in addition to the father of the deceased, two brothers and one sister were also dependents of the deceased and for fixing the loss of dependency, their age also has to be taken into account. According to them, in such circumstances, on taking into account the age of the brothers and sister also, the multiplier of 17 adopted by the Tribunal cannot be faulted. In the cross-objection, they would submit that the amount awarded by the Tribunal towards pain and suffering is on the lower side and the Tribunal ought to have awarded more amounts towards loss of love and affection. They would claim a further amount of Rs. 70,000/- as compensation for mental shock and sufferings. A claim for interest at 12% has also been advanced in the cross objection.

4. We have considered the rival contentions of the parties in detail.

5. We note that the deceased was a woman aged 25 years. The father, who is one of the claimants, was aged 55 years at the time of

filing the application for compensation. The brothers were aged 23 years and 18 years respectively and the sister 20 years at that time. She being a woman of 25 years, in the normal course of life, she is expected to get married and unlike in the case of sons, daughters may not contribute much to the maintenance of their parents especially when there are two grown up sons and another daughter. Normally, a girl would be married off before the age of 30 years. Further, both the brothers are majors and it cannot be assumed that they would be depending on their sister for sustenance for long even assuming that they now. Even, the other sister is aged 20 years. She also would get married at least by the age of 30 when she would also have ceased to be dependent on her sister. Taking into account all these circumstances, we have no doubt in our mind that the multiplier of 17 adopted by the Tribunal is certainly on the higher side. In the facts and circumstances of the case, we feel that the multiplier of 10 would be the appropriate one. Calculating the loss of dependency with the multiplier as 10, the compensation under that head would be only Rs. 1,20,000/- instead of Rs. 2,04,000/- awarded by the Tribunal. Therefore, the extra amount awarded has to be deducted from the total amount awarded.

6. However, we feel that the claim of the respondents in their cross objection for enhancement of compensation towards loss of love and affection should be increased from Rs. 5,000/- to Rs. 7,000/-. We do not think that there is any merit in the other contentions in the

counter claim. Since we have reduced Rs. 84,000/- from the compensation for loss of dependency and enhanced the compensation for loss of love and affection by Rs. 2,000/-, the net result is that the compensation awarded by the Tribunal has to be reduced by Rs. 82,000/-. The total amount awarded by the Tribunal is Rs. 2,23,000/- and deducting Rs. 82,000/- therefrom, the total compensation amount payable to the respondents-claimants would be Rs. 1,41,000/-. in respect of the other directions in the award of the Tribunal, there would be no change except substituting the total compensation as Rs. 1,41,000/- instead of Rs. 2,23,000/-. The other directions regarding release of part of the amount to the claimants immediately and deposit of balance in nationalised bank etc., as also the rate of interest would stand as in the impugned award without any change. The appeal and cross objections are disposed of as above.

Sd/- P.R. Raman, Judge.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.